

MEMORANDUM

DATE: September 21, 2007

TO: The Honorable Ruth Ann Minner
Members of the House Education Committee
Members of the Senate Education Committee

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 11 DE Reg. 181 [Final ESY Regulations]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE) final extended school year ("ESY") regulations published as 11 DE Reg. 181 in the August 1, 2007 issue of the Register of Regulations. Although DOE did not acknowledge receipt of Council's observations, SCPD commented on the proposed version of these regulations in the attached June 29, 2007 letter. The DOE effected no amendments based on the Council's observations. SCPD has the following supplemental observations which have been formally endorsed by the Developmental Disabilities Council; Disabilities Law Program; Brain Injury Association of Delaware; Easter Seals; Division of Vocational Rehabilitation; Autism Society of Delaware; Parent Information Center; and The Arc of Delaware.

The principal problem with the regulation is repeal of a regulatory note clarifying that students with classifications of SMH (Severe Mental Handicap), TMH (Trainable Mentally Handicapped), autism, deaf-blindness, TBI, and some physical disabilities are automatically entitled to ESY under statute [Title 14 Del.C. §1703(e)(f)]. The statute is based on the premise that such conditions are commonly recognized as severe disabilities. SCPD objected to the deletion of the note; however, the DOE declined to restore the note, commenting as follows:

The Department believes the normal school year is sufficiently defined in Title 14 of the Delaware Code, and the statute adequately addresses the specific populations being served. Given the detailed provisions in Title 14, no change to the regulation is necessary.

The DOE regulation is contrary to the statute. It affirmatively disallows categorical statutory eligibility by exclusively limiting ESY to: 1) individual IEP team determination [§6.2]; and 2) qualification under 1 of 5 individual standards [§§6.1 and 6.5]. There is no exception for students

who automatically qualify for ESY under statute. Furthermore, the rationale that the “normal school year is sufficiently defined in Title 14” is inaccurate. By statute [Title 14 Del.C. §1049], local educational agencies can establish their own school years as long as they amass a certain number of hours. For example, one district could legally adopt a 7 hour school day with 152 school days over 8 months while another district could adopt a 6 hour school day with 177 school days over 9 months. Finally, the DOE regulation does not refer to the normal school year as defined in Title 14. To the contrary, it refers to “the normal school year of the public agency “ (a/k/a district or charter school). Thus, DOE’s regulatory reference to “normal” or “regular” school year does not even implicitly refer the reader to Title 14 Del.C. §1703(e)(f).

SCPD respectfully requests that you encourage the DOE to reinstate the aforementioned regulatory note. Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the regulation.

cc: Parent Information Center
The Arc of Delaware
Autism Society of Delaware
Brain Injury Association of Delaware
Disabilities Law Program
Easter Seals
Division of Vocational Rehabilitation
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

P&I/11 reg 181 doe-esy 9-07